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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	X : : : : : : : : : : X	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,		Case No. 18-23538 (RDD)
Debtors. ¹		(Jointly Administered)

OBJECTION TO PROSPECTIVE SALE AND RESERVATION OF RIGHTS

Victor Reagan Family Trust (“Landlord”) hereby files this *Objection to Prospective Sale and Reservation of Rights* (“Objection and Reservation of Rights”) and respectfully represents the following:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

I. BACKGROUND

1. Debtor Kmart Stores of Illinois LLC is the current occupant of that certain store located at 3701 Broadway Street, Quincy, Illinois 62301-3721 (scheduled by the Debtors as Store Number 4433 at Docket Number 23 in the above-captioned jointly administered cases – herein referred to as the “Quincy Store”).

2. Landlord is the owner of the real property upon which the Quincy Store is located.

3. Landlord leased the subject real property to Certified Capital, LP (as successor in interest, herein referred to as “Lessee”). Subsequently, Lessee subleased a portion of such real property to Debtor Kmart Stores of Illinois LLC (“Sublessee”).

4. Sublessee operated the Quincy Store under the sublease with Landlord’s Lessee.

5. Pursuant to the terms of the lease between Landlord and Lessee, the existence of the lease is coterminous with the sublease between Lessee and Sublessee. In other words, in the event the sublease expires or is terminated, the lease between Landlord and Lessee is also likewise expired and/or terminated, as applicable.

6. Pursuant to the terms of the sublease (“Sublease”) between Lessee and Sublessee, the term of the Sublease must be renewed by written notice (“Renewal Notice”) delivered from Sublessee to Lessee every five (5) calendar years. In the event a Renewal Notice is not delivered, the term of the Sublease is deemed expired, and the Sublessee’s occupation of the Quincy Store thereafter defaults to a month-to-month holdover tenancy.

7. Prior to the bankruptcy petition date, the term of the Sublease expired because Sublessee did not deliver any Renewal Notice to Lessee. Accordingly, the extent of Sublessee’s (and the bankruptcy estate’s) interest in the Quincy Store is limited to that of a holdover month-to-month tenant under applicable non-bankruptcy law.

8. On October 15, 2018, the Debtors filed the *Motion for Approval of (I) Procedures for Store Closing Sales and (II) Assumption of Liquidation Consulting Agreement* [Dkt. 23] (“Store Closing Motion”). In Exhibit 1 to the Store Closing Motion, the Debtors scheduled the Quincy Store as one of the stores to be closed under the procedures approved by the Store Closing Motion.

9. On November 19, 2018, the Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* [Dkt. 816] (“Sale Procedures Order”). Pursuant to paragraph 31 on page 16 of the Sale Procedures Order, the deadline for parties to object to the proposed assumption and assignment of any unexpired lease is the later of: (i) 14 days after service of the “Assumption and Assignment Notice” (as defined in the Sale Procedures Order); and (ii) January 7, 2019.

10. The Debtors filed their supplemental Assumption and Assignment Notice on December 5, 2018 [Dkt. 1054] (“Assumption and Assignment Notice”).

11. Upon review, there is no mention of the Quincy Store as an asset or executory contract subject to the Assumption and Assignment Notice. Further, Landlord’s counsel spoke with Debtors’ counsel on January 7, 2019, regarding the sale and bidding process. Debtors’ counsel reported that, as of January 7, 2019, the bidding process for Debtors’ assets was still ongoing and that no bids had been submitted that would include the estate’s interest (if any) in the Quincy Store Sublease.

12. Without any applicable bids to assume and assign the Quincy Store Sublease, any objection related to the same would be unnecessary. However, out of an abundance of caution in light of the January 7, 2019, objection deadline set forth in the Sale Procedures Order, Landlord hereby files this Objection and Reservation of Rights as a placeholder in the event any qualified bids are submitted and include the Quincy Store Sublease.

II. OBJECTIONS

13. The term of the Quincy Store Sublease expired prior to the petition date because the requisite Renewal Notice was not delivered. Accordingly, under the terms of the Sublease the Sublessee's occupation of the Quincy Store is confined to a month-to-month tenancy. Consequently, the extent of the bankruptcy estate's interest in the Quincy Store is limited to that of a holdover tenant under applicable non-bankruptcy law.

14. A month-to-month tenancy under an expired lease of non-residential real property is not a valid leasehold interest subject to assumption and assignment under 11 U.S.C. § 365. Essentially, the Sublessee's holdover tenancy in the Quincy Store (as determined by applicable non-bankruptcy law) is not assignable under the Bankruptcy Code.

15. Landlord hereby objects to any proposed assumption and/or assignment of the Quincy Store Sublease (in the event any qualified bids are submitted and include the Quincy Store Sublease).

III. RESERVATION OF RIGHTS

16. Landlord hereby reserves all rights to supplement and amend this Objection and Reservation of Rights, with any such supplements and amendments to relate back to this timely filed Objection and Reservation of Rights. Landlord hereby reserves all rights to present any evidence, factual presentation, oral argument and/or legal authorities at any proceedings before the Court in support of the positions herein.

[signature page follows]

Dated: January 7, 2019
New York, New York

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/s/ Katherine R. Catanese
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection and Reservation of Rights was served electronically on January 7, 2019, via CM/ECF on all parties registered to receive electronic notice in these cases.

/s/ Katherine R. Catanese
Katherine R. Catanese